

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Connect America Fund

WC Docket No. 10-90

A National Broadband Plan for Our Future

GN Docket No. 09-51

Establishing Just and Reasonable Rates for Local  
Exchange Carriers

WC Docket No. 07-135

High-Cost Universal Service Support

WC Docket No. 05-337

Developing an Unified Intercarrier Compensation  
Regime

CC Docket No. 01-92

Federal-State Joint Board on Universal Service

CC Docket No. 96-45

Lifeline and Link-Up

WC Docket No. 03-109

**COMMENTS OF  
THE MASSACHUSETTS DEPARTMENT OF  
TELECOMMUNICATIONS AND CABLE**

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Department of Telecommunications and Cable

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**ATTACHMENT 1:**

*Appropriate Regulatory Plan to Succeed Price Cap Regulation for Verizon New England, Inc.,*  
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**ATTACHMENT 2:**

*Appropriate Regulatory Plan to Succeed Price Cap Regulation for Verizon New England, Inc.,*  
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**ATTACHMENT 3:**

*Intrastate Access Rates of Competitive Local Exchange Carriers, D.T.C. 07-9, Final Order*

**ATTACHMENT 4:**

*Investigation into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, D.T.E. 01-20 Part A-C, Order on Verizon's Motion to Reopen the Record*

## **I. INTRODUCTION**

The Massachusetts Department of Telecommunications and Cable (“MDTC”)<sup>1</sup> hereby submits these comments in response to the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (“*Comprehensive ICC/USF Reform NPRM*” or “NPRM”) issued by the Federal Communications Commission (“FCC” or “Commission”) on February 9, 2011, in the above-captioned proceedings.<sup>2</sup> Through this extensive NPRM, the Commission seeks comment on comprehensive reform of intercarrier compensation (“ICC”) and the high-cost portion of the federal Universal Service Fund (“USF” or “Fund”).<sup>3</sup> The Commission offers numerous immediate, near-term, and long-term proposals for reforming the existing high-cost USF and creating a Connect America Fund (“CAF”) under which: (1) broadband would be a supported service for unserved areas; (2) the high-cost USF and implicit subsidies in the existing ICC system would be transitioned into the CAF; and (3) ICC would be transitioned away from per-minute charges.<sup>4</sup> In its reform efforts, the Commission will be guided by the need: (1) to modernize USF and ICC for broadband; (2) for fiscal responsibility; (3) for accountability; and (4) to transition to market-driven policies.<sup>5</sup>

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<sup>1</sup> The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth of Massachusetts. *See* MASS. GEN. LAWS ch. 25C, § 1.

<sup>2</sup> *See Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011).

<sup>3</sup> *Id.* at ¶ 1.

<sup>4</sup> *Id.* at ¶¶ 14-44.

<sup>5</sup> *Id.* at ¶ 10. The Commission indicates that these proposed guiding principles are “rooted in section 254[.]” *Id.* The MDTC notes the undercurrent of consumer benefit in each of these principles, consistent with the Commission’s later declaration that “[t]he purpose of universal service is to benefit the consumer, not the carrier.”

The MDTC welcomes this opportunity to respond to the Commission's inquiries and applauds the Commission's intent to implement much-needed comprehensive reform. The MDTC also commends the Commission's continued commitment to increase public access to broadband services, consistent with the National Broadband Plan's recommendations and Congressional directive.<sup>6</sup> The MDTC primarily focuses its comments on the near-term USF and long-term ICC reform proposals presented in the NPRM. The MDTC's views are based upon the current record and may be modified based on future developments.

The MDTC respectfully offers the following for consideration.

## **II. DISCUSSION**

### **A. Broadband as a Supported Service**

Consistent with National Broadband Plan recommendations, the Commission intends to formally make broadband a supported service through the CAF, the proposed replacement for telephone-centric high-cost support.<sup>7</sup> For near-term reform, the Commission targets some of the waste and inefficiencies in the high-cost system<sup>8</sup> and seeks to direct any realized savings to a newly-created CAF.<sup>9</sup> In the long-term, the Commission proposes to eliminate all high-cost programs and transition into the CAF, which "would provide ongoing support to maintain and

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*Id.* at ¶ 240. *See also* Letter from Hon. Edward J. Markey, Chairman, House Subcommittee on Telecommunications and the Internet, to Kevin J. Martin, Chairman, Federal Communications Commission (Apr. 2, 2007) (noting that "the central purpose of the universal service provisions ... is to benefit consumers, not ... carriers").

<sup>6</sup> *See* American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2)(D), 123 Stat. 115, 516 ("Recovery Act") (directing the Commission to develop a National Broadband Plan "to ensure that all people of the United States have access to broadband capability" and a "strategy for achieving affordability of such service and maximum utilization of broadband infrastructure").

<sup>7</sup> *See Comprehensive ICC/USF Reform NPRM* at ¶¶ 1-13.

<sup>8</sup> *Id.* at ¶ 7 (noting that the "USF provides more support than necessary to achieve our goals, subsidizes a competitor to a voice and broadband provider that is offering service without government assistance, or supports several voice networks in a single area" in many areas of the country).

<sup>9</sup> *Id.* at ¶ 14.

advance broadband across the country in areas that are uneconomic to serve absent such support, with voice service ultimately provided as an application over broadband networks.”<sup>10</sup> As a precursor to its efforts, the Commission inquires whether it should adopt an additional universal service principle recently recommended by the Federal-State Joint Board on Universal Service (“Joint Board” or “Board”).<sup>11</sup>

The MDTC supports the Commission’s decision to formally make broadband a supported service to the extent that support is actually provided in a more equitable and fiscally responsible manner that minimizes the burden on consumers who ultimately pay into the USF, in realization of the guiding principles for reform espoused by the Commission. As such, the MDTC urges the Commission to adopt the Joint Board’s recommendation “that universal service support be directed where possible to networks that provide advanced services, as well as to voice services.”<sup>12</sup> In support of its position, the MDTC offers the following for consideration.

**1. The Commission should adopt the additional universal service principle recommended by the Joint Board**

Section 254 governs administration of the universal service programs and mandates that the Commission base its policies for the preservation and advancement of universal service on the six principles enumerated in the statute.<sup>13</sup> Section 254 also permits the Joint Board and Commission to adopt additional principles to protect “the public interest, convenience, and

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<sup>10</sup> *Id.* at ¶ 30.

<sup>11</sup> *Id.* at ¶¶ 55-59.

<sup>12</sup> *Id.* at ¶¶ 55, 58, citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link Up*, WC Docket No. 03-109, Recommended Decision, 25 FCC Rcd 15598, FCC 10J-3, at ¶ 75 (“2010 Recommended Decision”). The Joint Board has also previously recommended that the Commission add broadband to the list of supported services. See *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477, FCC 07J-4, at ¶ 62 (“2007 Recommended Decision”).

<sup>13</sup> See 47 U.S.C. §§ 254(b)(1)-(6) (listing the six universal service principles).

necessity,”<sup>14</sup> and the Commission proposes to adopt the Joint Board’s recommended principle “that universal service support should be directed where possible to networks that provide advanced services, as well as voice services.”<sup>15</sup> The Commission inquires as to how it should apply the principle relative to the other criteria in section 254.<sup>16</sup>

The MDTC supports the adoption of the Joint Board’s recommendation because it believes it to be necessary and appropriate for the protection of the public interest, convenience, and necessity. For instance, the MDTC agrees that the proposed principle “strikes a reasonable balance between the goal of preserving and advancing universal service as currently supported and the goal of increasing access to advanced telecommunications and information services.”<sup>17</sup> Further, current universal service support already indirectly supports broadband for certain carriers in rural areas.<sup>18</sup> By adopting this principle, the Commission will be implementing a more equitable policy that could benefit consumers in every state. In addition, the Commission’s

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<sup>14</sup> See 47 U.S.C. § 254(b)(7).

<sup>15</sup> *Comprehensive ICC/USF Reform NPRM* at ¶¶ 55, 58.

<sup>16</sup> *Id.* at ¶ 59.

<sup>17</sup> *Id.*

<sup>18</sup> As the Commission points out, certain smaller carriers in rural areas have been able “to largely finance [telephone] network upgrades to provide high speed Internet access and, increasingly, video services, in many communities” through its “no barriers to advanced services policy” and the existing funding mechanisms. *Id.* at ¶¶ 52, 170, citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, FCC 01-157 (rel. May 23, 2001) (“*Rural Task Force Order*”). See also United States Government Accountability Office, Report to Congressional Committees, “Telecommunications: FCC Needs to Improve Performance Management and Strengthen Oversight of the High-Cost Program,” GAO-08-633, at 16 (June 2008) (“GAO High-Cost Report”) (noting the indirect support “in some rural areas, particularly those areas served by rural carriers”).

inclusion of this principle will help the Commission tie its classification of broadband as an information service<sup>19</sup> to the federal statutory treatment of advanced services.<sup>20</sup>

With regard to how the Commission should apply the principle to the other section 254 criteria, the Commission will need to act in accordance with existing universal service principles when it supports the build-out of broadband infrastructure.<sup>21</sup> These principles include those enumerated in section 254(b), as well as the competitive neutrality principle adopted by the Joint Board and the Commission in 1997.<sup>22</sup> In addition, because section 254(b)(7) requires that

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<sup>19</sup> *Inquiry Concerning High-Speed Access to the Internet Over Cable & Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd. 4798, FCC 02-77 (rel. Mar. 15, 2002), *aff'd*, *Nat'l. Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005); *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities et al.*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 14853, FCC 05-150 (rel. Sept. 23, 2005), *aff'd*, *Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007); *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, 21 FCC Rcd 13281, FCC 06-165 (rel. Nov. 7, 2006); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd. 5901, FCC 07-30 (rel. Mar. 23, 2007).

<sup>20</sup> See, e.g., 47 U.S.C. §§ 254(b)(2) and (3) (requiring that universal service policy be guided by the principles that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation” including to “low-income consumers and those in rural, insular, and high cost areas”); 47 U.S.C. § 1302(d)(1) (defining “advanced telecommunications capability” as “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology”).

<sup>21</sup> See *Comprehensive ICC/USF Reform NPRM* at ¶ 56 (stating that it “may balance these principles to achieve statutory objectives, but may not depart from them altogether to achieve some other goal”), citing *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1102-1103 (D.C. Cir. 2009); *Qwest Corp. v. FCC*, 258 F.3d 1191, 1199-1200 (10<sup>th</sup> Cir. 2001). See also *Qwest Corp. v. FCC*, 398 F.3d 1222, 1226 (10<sup>th</sup> Cir. 2005). The MDTC currently refrains from commenting on how these principles should be weighed going forward.

<sup>22</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, FCC 97-157, at ¶¶ 43, 47 (rel. May 8, 1997) (“*Universal Service First Report and Order*”) (subsequent history omitted). In the *Universal Service First Report and Order*, the Commission defined the “Competitive Neutrality” principle as:

COMPETITIVE NEUTRALITY -- Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.

*Id.* at ¶ 47.



additional principles “be consistent with this chapter,”<sup>23</sup> the Commission will need to harmonize the application of the principle to the other provisions of section 254, including sections 254(c)<sup>24</sup> and 254(h).<sup>25</sup> Further, if the Commission explicitly provides support to advanced services such as broadband, then it will need to update and address the section 254(d) contributions requirements.<sup>26</sup>

## **B. Universal Service Reform**

The Commission proposes a two-staged approach for implementing its comprehensive universal service reform.<sup>27</sup> The first stage, a transition period, involves reforms focused, in part, on targeted changes in the existing high-cost fund and creation of “Phase I” of the CAF.<sup>28</sup> Some of the Commission’s proposals for reform and for restraining the existing high-cost fund include caps on the total high-cost support received by a carrier annually, consolidation and/or

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<sup>23</sup> 47 U.S.C. § 254(b)(7).

<sup>24</sup> Section 254(c) defines universal service as “an evolving level of telecommunications services” but permits modification of the definition subject to Joint Board recommendation upon a showing that the services “(A) are essential to education, public health, or public safety; (B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; (C) are being deployed in public telecommunications networks by telecommunications carriers; and (D) are consistent with the public interest, convenience, and necessity.” 47 U.S.C. §§ 254(c)(1) and (2). The Joint Board has already recommended to the Commission that it add broadband Internet service to the list of supported services, and discussed why it “satisfies the [section 254(c)(1)] statutory criteria for inclusion.” *2007 Recommended Decision* at ¶¶ 58-61.

<sup>25</sup> Section 254(h) requires the Commission to establish competitively neutral rules relating to access to advanced telecommunications and information services for eligible schools, health care providers, and libraries, which the Commission has already done. 47 U.S.C. § 254(h)(2).

<sup>26</sup> See 47 U.S.C. § 254(d). Currently, only interstate telecommunications service providers and certain “other” providers of telecommunications are required to contribute to the Fund. The MDTC refrains from further comment on the need for updated contributions requirements, since the Commission is expected to issue a separate *Contributions NPRM* shortly. See FCC’s Broadband.gov webpage, “Broadband Action Agenda,” Item No. 19 (listing an anticipated *USF Contributions NPRM*); Gotsch, Ted, “Reverse Auctions, Per-Line Payment Cap Included in FCC’s USF-ICC Rulemakings,” TR Daily (Feb. 8, 2011) (including statements by Chairman Genachowski that indicate the Commission’s intent to move on the contributions issue as part of a separate proceeding).

<sup>27</sup> See *Comprehensive ICC/USF Reform NPRM* at ¶ 18.

<sup>28</sup> *Id.* at ¶¶ 18-19. This stage would also include the creation of a Mobility Fund “intended to spur build out of advanced mobile wireless networks in areas not served by current-generation mobile networks.” *Id.* at ¶ 19. The Commission proposed creation of and sought comment on this Fund in an NPRM released in October 2010. *Id.*

elimination of certain high-cost mechanisms and support, and elimination of the identical support rule.<sup>29</sup>

During this first stage and beginning in 2012, the Commission proposes to invite competitive bidding for Phase I CAF funding for one-time support of broadband build-out in unserved areas.<sup>30</sup> Also, total disbursements from the reformed high-cost fund and the Phase I CAF would be limited to the high-cost 2010 disbursement levels.<sup>31</sup> The second stage would involve transitioning existing funding and eliminating remaining high-cost mechanisms into a final version of the CAF. The CAF would provide ongoing broadband support to those areas of the country that are “uneconomic to serve absent such support.”<sup>32</sup>

In both stages, the CAF would support only broadband networks, with the expectation that voice service would ultimately be an application provided over those networks.<sup>33</sup> Under current statutory requirements, only eligible telecommunications carriers (“ETCs”) are eligible to receive support.<sup>34</sup> As a part of its ETC-related inquiries for disbursement of funds through the CAF, the Commission seeks comment on whether it should utilize its forbearance authority to

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<sup>29</sup> See *Comprehensive ICC/USF Reform NPRM* at ¶¶ 21, 174-215, 225-60.

<sup>30</sup> *Id.* at ¶¶ 24, 261-388. The Commission only briefly requests comment on an alternate funding proposal whereby the Commission would implement a competitive application approach comparable to that utilized under the Broadband Technology Opportunities Program and the Broadband Initiatives Program established pursuant to the Recovery Act. *Id.* at ¶ 288. However, a substantial portion of the Commission’s Phase I CAF inquiries focus only on the reverse auction approach.

<sup>31</sup> See *Comprehensive ICC/USF Reform NPRM* at ¶¶ 23, 274-76, 414.

<sup>32</sup> *Id.* at ¶ 30. The Commission also intends for the CAF to replace “implicit subsidies in the ICC system.” *Id.* at ¶ 15.

<sup>33</sup> See *Comprehensive ICC/USF Reform NPRM* at ¶ 30.

<sup>34</sup> Section 254(e) specifies that “only an eligible telecommunications carrier designated under section 214(e) ... shall be eligible to receive specific Federal universal service support.” 47 U.S.C. § 254(e).

forbear “from imposing this requirement on recipients in general . . . [or] on recipients of support in the first phase of the CAF, even if [it does not] forbear in a broader context.”<sup>35</sup>

The MDTC recognizes that, by making broadband a supported service under the proposed CAF, coupled with a more equitable disbursement of available funding, the Commission will be able to redress the effects of universal service funding practices and policies that currently benefit only a limited number of carriers and their subscribers through the high-cost fund. This proposal is consistent with the Joint Board’s recommendation that “universal service support should be directed where possible to networks that provide advanced services, as well as voice services”<sup>36</sup> and that access to broadband is beneficial to all consumers. As such, the MDTC offers the following for consideration.

**1. The MDTC supports restraining the size of the Fund**

The Commission indicates that in its near-term reforms it intends to eliminate waste and inefficiency, improve incentives for rational investment and operation by companies operating in rural areas, and set rate-of-return companies on the path to incentive-based regulation.<sup>37</sup> In this way, the Commission intends to control the size of the USF as it transitions from supporting telephone service through the high-cost fund to supporting broadband through the CAF.

In connection with controlling the size of the Fund, the Commission proposes to establish a \$3,000 per-line cap on total high-cost support received by a carrier annually.<sup>38</sup> However, as the Commission points out, of the over 1,400 incumbent local exchange carriers (“ILECs”) that receive high-cost support, fewer than twenty (20) receive more

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<sup>35</sup> *Comprehensive ICC/USF Reform NPRM* at ¶ 318. See also 47 U.S.C. §§ 160(a) and (b) (setting forth the standard by which the Commission may grant forbearance).

<sup>36</sup> Discussed *supra* at Section II.A.

<sup>37</sup> *Comprehensive ICC/USF Reform NPRM* at ¶ 157.

<sup>38</sup> *Id.* at ¶¶ 210-11.

than \$3,000 per line each year.<sup>39</sup> Moreover, as the Commission also points out, some companies that report serving 500 lines or less in a service area receive annual support ranging between \$8,000 to over \$23,000 per line.<sup>40</sup> The Commission inquires as to whether \$3,000 or some other number is an appropriate cap amount,<sup>41</sup> and also inquires as to whether it should develop separate per-line caps for each high-cost mechanism.<sup>42</sup>

Consistent with our past comments, the MDTC fully supports capping and restraining the growth of the high-cost fund.<sup>43</sup> The MDTC reiterates its view that the preferred approach would be for the Commission to implement a cap on each high-cost mechanism by ILEC per study area. Such an approach “would permit the Commission to more easily make targeted reductions to the various mechanisms as it transitions from the High-Cost Fund to the CAF.”<sup>44</sup> However, to effectively restrain the growth of the Fund, the MDTC further urges the Commission to implement a two-part cap.

First, the Commission should implement an immediate freeze on all high-cost support amounts effective on the date of the Commission’s order, thereby prohibiting further growth. Second, the Commission should institute a per-line cap, but at a lesser amount than the proposed \$3,000 per-line cap, which would have little or no effect on restraining the size of the high-cost fund (as the Commission itself points out, less than 1.5% of current ILECs would be affected by

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<sup>39</sup> *Id.* at ¶ 209. The Commission specifies that the average per-line amount for ILECs operating fewer than 500 lines equals approximately \$1,148 per-line in high-cost support. *Id.* at n.323.

<sup>40</sup> *See Comprehensive ICC/USF Reform NPRM* at ¶ 210.

<sup>41</sup> *Id.* at ¶ 211.

<sup>42</sup> *Id.* at ¶ 213.

<sup>43</sup> *See* MDTC Comments, WC Docket Nos. 05-337, 03-109, 06-122, and 04-36, CC Docket Nos. 96-45, 99-200, 96-98, 01-92, and 99-68, at 21-22 (filed Nov. 26, 2008) (“MDTC November 2008 Comments”); MDTC Comments, WC Docket Nos. 10-90 and 05-337, GN Docket No. 09-51, at 3-5 (filed Jul. 12, 2010) (“MDTC July 2010 Comments”).

<sup>44</sup> MDTC July 2010 Comments at 3-5.

such a cap). Further, if the Commission implements other reform proposals that eliminate, reduce, and/or consolidate existing high-cost mechanisms such as Safety Net Additive Support (“Safety Net”) and Local Switching Support (“LSS”) and High-Cost Loop Support,<sup>45</sup> then average per-line support for rural carriers would be expected to drop below their current levels. As a result, the MDTC instead urges the Commission to implement a cap considerably lower than the \$3,000 proposed in order to realize a real and effective constraint on high-cost fund growth.<sup>46</sup> As an example, in Massachusetts for 2009, carrier annual high-cost support per line ranged from approximately \$0.60 (Verizon, over 2.4 million loops), to \$140.90 (Granby Telephone and Telegraph, 2,419 loops), to \$638.98 (Richmond Telephone, 972 loops).<sup>47</sup>

Finally, the MDTC believes that implementing a cap on the existing support amounts and lowering the overall per-line cap will serve two additional purposes. First, it will ensure that the total disbursements of the reformed high-cost fund and Phase I CAF do not exceed the high-cost 2010 disbursement levels, as envisioned by the Commission.<sup>48</sup> Second, it will provide the Commission with the opportunity to better evaluate the ultimate needs of the final CAF based upon a fixed budget (capped support) and the data resulting from the Phase I disbursements.<sup>49</sup>

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<sup>45</sup> See *Comprehensive ICC/USF Reform NPRM* at ¶¶ 21, 162-215.

<sup>46</sup> For instance, a scatter plot provided in the NPRM that plots high-cost support per loop by study area appears to show that a majority of carriers fall well below a \$1,500-\$2,000 per-line amount. See *Comprehensive ICC/USF Reform NPRM*, Fig. 12, at 74. Of course, even this amount seems unnecessarily high relative to the burden placed on Massachusetts consumers.

<sup>47</sup> Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report – Data Received Through October 2010*, CC Docket Nos. 96-45 and 98-202, compare Table 3.30 (listing total carrier-specific high-cost support received per carrier by state) with Table 3.31 (reporting carrier-specific ILEC high-cost loop support data for 2009 by state) (“*2010 Monitoring Report*”).

<sup>48</sup> See *Comprehensive ICC/USF Reform NPRM* at ¶¶ 23, 274-76.

<sup>49</sup> The MDTC presumes that the Commission would have adopted better data reporting and accountability measures during this time.

**2. The MDTC supports an exemption whereby certain states would be eligible to redirect loss of existing funding to broadband**

The Commission proposes to eliminate interstate access support (“IAS”) and merge that funding into the CAF.<sup>50</sup> The Commission recognizes that “in some states, a significant portion of high-cost support is IAS.”<sup>51</sup> Therefore, it proposes that “any state whose [incumbent] carriers receive IAS now would receive at least the same amount of CAF support in the future . . . with no guarantee that the same carrier that received IAS would receive CAF.”<sup>52</sup> The Commission seeks comment on these proposals.

Consistent with its previous comments, the MDTC continues to refrain from offering a recommendation on the elimination of IAS.<sup>53</sup> Instead, the MDTC notes that Massachusetts would qualify as a state where “a significant portion of high-cost support is IAS.” Only a single carrier in Massachusetts receives IAS.<sup>54</sup> If this support mechanism is eliminated, then Massachusetts would lose close to two-thirds of the limited high-cost funding that it currently receives. Utilizing the 2010 support totals, which are still subject to some adjustment, Massachusetts’ total high-cost support would decrease from \$2,295,330 to \$768,177.<sup>55</sup>

In principle, the MDTC supports the proposition that states like Massachusetts would be guaranteed, at a minimum, the same baseline level of funding received by their incumbent IAS to be applied to broadband deployment through the CAF. The MDTC believes that such a limited exception is appropriate under the circumstances. As the MDTC has consistently argued,

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<sup>50</sup> See *Comprehensive ICC/USF Reform NPRM* at ¶¶ 228-31 (citations omitted).

<sup>51</sup> *Id.* at ¶ 238.

<sup>52</sup> *Id.*

<sup>53</sup> See MDTC July 2010 Comments at 7.

<sup>54</sup> *2010 Monitoring Report* at Table 3.28 (reporting carrier-specific IAS totals by state).

<sup>55</sup> *Id.*, comparing Tables 3.28 and 3.30.

Massachusetts is a net contributor state, receiving in support only a fraction of its contributions to the Fund.<sup>56</sup> This inequitable disbursement places a disparate burden on consumers, who ultimately bear the burden of supporting the Fund.

The MDTC is pleased to see the Commission taking this imbalance into consideration. However, the MDTC believes that the Commission needs to do more. In particular, the Commission should consider the cumulative loss of additional funding for states like Massachusetts resulting from some of the Commission's other reform proposals. For instance, if the Commission implements elimination of LSS and Safety Net,<sup>57</sup> then based on the 2010 totals, Massachusetts' high-cost support would be further reduced from \$768,177 to \$206,472.<sup>58</sup> Therefore, the MDTC proposes that the Commission consider repurposing total state-specific ILEC support losses to states like Massachusetts in limited circumstances. The Commission should also consider establishing a formula for calculating the level of CAF support for each state based on a percentage of that state's contribution to the Fund. To further narrow the potential pool of recipients for guaranteed repurposed funding, the Commission may also consider limiting that funding only to those states that do not currently receive competitive ETC high-cost support.<sup>59</sup>

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<sup>56</sup> See MDTC July 2010 Comments at n.7; MDTC Comments, WC Docket No. 05-337, CC Docket No. 96-45, at 16 (filed Jan. 28, 2010).

<sup>57</sup> See *Comprehensive ICC/USF Reform NPRM* at ¶¶ 21, 158, 175, 186.

<sup>58</sup> See *2010 Monitoring Report*, comparing Tables 3.7 (reporting total Safety Net payments by state), 3.13 (reporting total trued-up LSS payments by state), 3.28, and 3.30.

<sup>59</sup> The current list of states that would qualify under this condition appears to be limited to Connecticut, Delaware, Maryland, Massachusetts, New Jersey, Ohio, and Rhode Island. *Id.* at Table 3.15 (reporting the total high-cost payments by state for ILECs and competitive ETCs). The MDTC does not include the District of Columbia because they do not currently receive any high-cost funding. *Id.*

### **3. The MDTC supports elimination of the identical support rule**

The Commission further proposes to eliminate the identical support rule, which is applicable only to competitive, predominately wireless, ETCs, and to redirect competitive ETC funding to the CAF.<sup>60</sup> It offers two possible options for doing this. The first option would repurpose all competitive ETC funding to the CAF through a gradual phase-down of funding over a multi-year period.<sup>61</sup> The second option would still generally redirect all competitive ETC funding over the multi-year period, but would permit a limited waiver or exception until implementation of the final CAF, if certain qualifications were met.<sup>62</sup> Such qualifications may include: (1) whether the availability of affordable mobile service in an area would be jeopardized, requiring submission of certain cost and revenue data; (2) whether continued support would be required in order for those carriers to build out coverage in areas presently unserved by mobile voice and/or mobile broadband; or (3) whether the carrier met certain criteria.<sup>63</sup>

As it has in the past, the MDTC supports elimination of the identical support rule, but opposes a blanket elimination of competitive ETC support, due to the potential for discriminatory consequences.<sup>64</sup> The Commission's first option would appear to result in this blanket elimination of competitive ETC support. However, while the MDTC considers such elimination problematic, it nevertheless opposes payout of support to competitive ETCs in areas where competitors exist that receive no support. The MDTC also opposes payout of duplicative

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<sup>60</sup> See *Comprehensive ICC/USF Reform NPRM* at ¶¶ 241-60.

<sup>61</sup> *Id.* at ¶ 242.

<sup>62</sup> *Id.* at ¶¶ 242, 250-55.

<sup>63</sup> *Id.* at ¶¶ 250-54.

<sup>64</sup> See MDTC November 2008 Comments at 21-22 (noting that blanket elimination may be “discriminatory and unfair in that it provides ILECs with an unfair competitive advantage in rural areas”); MDTC July 2010 Comments at 5.



support that subsidizes multiple phones in many households. Both practices unnecessarily increase the burden placed on Massachusetts consumers who contribute to the Fund, and who realize comparably little benefit from these practices. As a result, the MDTC believes that the second option, which permits a limited waiver or exception until implementation of the final CAF, creates the fairest and most balanced approach between avoidance of discriminatory consequences and potential relief from the disparate contributions burden.

Under the second approach, the Commission should formally eliminate the identical support rule and base ongoing, transitional competitive ETC funding on the competitive ETC's *own* costs instead of the incumbent's. These costs should be calculated in light of the reform proposals ultimately adopted by the Commission that eliminate or modify existing high-cost mechanisms, as well as adoption of any additional caps. Further, the Commission should reduce ongoing support if it determines that a non-supported competitor offers service in some or part of the service area, and the Commission should prohibit support in those areas where multiple competitive ETCs have overlapping service, because such practices unnecessarily increase the Fund's size. The Commission may also consider implementing a lower per-line cap for competitive ETCs relative to ILECs, based on competitive ETCs' costs and technological capabilities.

**4. The MDTC approves of redirecting support to the CAF and to more immediate reductions of the Fund's size**

Throughout the NPRM, the Commission inquires as to whether all funding freed up from its immediate and near-term proposals should be repurposed for the CAF, or whether a portion should be used to reduce the overall size of the Fund.<sup>65</sup> As a part of its analysis, the Commission

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<sup>65</sup> See *Comprehensive ICC/USF Reform NPRM* at ¶¶ 23, 233, 249.

repeatedly states its intent to restrain the overall size of the Fund, seeking to minimize the burden born by the consumers and businesses that ultimately pay into the Fund.<sup>66</sup>

As a general matter, the MDTC approves of redirecting support to the CAF to the extent that money is more equitably distributed. However, for over a decade, the Commission has permitted the high-cost fund to grow without effective restraints.<sup>67</sup> This is due in large part to inefficiencies in the system and lack of accountability. In addition, there exists an inequitable distribution of funding between states and territories, as the table below indicates.<sup>68</sup>

	State or Territory	Total USF Contributions (Thousands)	Total USF Support Received (Thousands)	Total USF Support Received per Dollar Contributed
1	Delaware	\$27,334	\$1,718	\$0.06
2	Maryland	\$163,148	\$14,674	\$0.09
3	New Jersey	\$248,888	\$53,217	\$0.21
4	Massachusetts	\$169,539	\$46,335	\$0.27
5	Connecticut	\$99,000	\$27,254	\$0.28
6	D.C.	\$34,291	\$9,517	\$0.28
7	New Hampshire	\$36,248	\$11,618	\$0.32
8	Rhode Island	\$24,456	\$8,925	\$0.36
9	Florida	\$495,839	\$221,903	\$0.45
10	Nevada	\$69,280	\$32,844	\$0.47
11	Pennsylvania	\$307,789	\$149,006	\$0.48
12	Illinois	\$307,767	\$153,964	\$0.50
13	Ohio	\$259,335	\$134,569	\$0.52
14	Virginia	\$209,307	\$117,918	\$0.56
15	Michigan	\$212,378	\$145,763	\$0.69
16	Indiana	\$145,484	\$102,859	\$0.71
17	Utah	\$55,550	\$39,323	\$0.71
18	California	\$822,527	\$583,849	\$0.71
19	New York	\$480,589	\$342,968	\$0.71
20	Colorado	\$132,967	\$96,988	\$0.73
21	N. Carolina	\$225,632	\$177,590	\$0.79
22	Tennessee	\$157,946	\$139,597	\$0.88
23	Washington	\$155,701	\$140,093	\$0.90
24	Arizona	\$146,289	\$140,249	\$0.96
25	Georgia	\$243,770	\$239,517	\$0.98
26	Missouri	\$143,845	\$143,583	\$1.00
27	Texas	\$518,620	\$519,861	\$1.00
28	Oregon	\$89,978	\$99,608	\$1.11

<sup>66</sup> *Id.* at ¶¶ 10, 43, 111, 241, 267, 275.

<sup>67</sup> *See 2010 Monitoring Report* at Chart 3.1 (charting the annual high-cost support fund payments for 1986 to 2010).

<sup>68</sup> The MDTC calculated this data utilizing information from the *2010 Monitoring Report*. *Id.* at Table 1.12 (listing the annual payments and contributions, in thousands, by state for 2009).

29	Maine	\$31,580	\$40,463	\$1.28
30	Alabama	\$118,935	\$154,864	\$1.30
31	Minnesota	\$118,125	\$153,885	\$1.30
32	S. Carolina	\$110,601	\$145,464	\$1.32
33	Vermont	\$18,062	\$25,281	\$1.40
34	Wisconsin	\$125,210	\$176,478	\$1.41
35	W. Virginia	\$49,119	\$70,784	\$1.44
36	Kentucky	\$97,031	\$140,451	\$1.45
37	Idaho	\$37,003	\$59,389	\$1.60
38	Puerto Rico	\$69,074	\$111,976	\$1.62
39	Hawaii	\$36,936	\$61,037	\$1.65
40	Louisiana	\$106,388	\$203,972	\$1.92
41	Iowa	\$67,353	\$142,219	\$2.11
42	New Mexico	\$48,248	\$113,284	\$2.35
43	Arkansas	\$68,063	\$167,647	\$2.46
44	Nebraska	\$41,711	\$129,163	\$3.10
45	Oklahoma	\$78,444	\$249,811	\$3.18
46	N. Mariana Islands	\$806	\$2,619	\$3.25
47	Montana	\$25,215	\$88,774	\$3.52
48	Virgin Islands	\$5,136	\$18,151	\$3.53
49	Wyoming	\$15,103	\$54,916	\$3.64
50	Kansas	\$65,855	\$249,034	\$3.78
51	Guam	\$3,904	\$17,392	\$4.45
52	Mississippi	\$66,750	\$321,277	\$4.81
53	S. Dakota	\$19,168	\$107,596	\$5.61
54	N. Dakota	\$16,438	\$102,314	\$6.22
55	Alaska	\$19,511	\$244,416	\$12.53
56	American Samoa	\$516	\$8,401	\$16.28

The MDTC believes that the Commission should both use some of the savings realized from its reform efforts to fund the Phase I CAF and use some to reduce the Fund's size.<sup>69</sup> Because it is unclear at this stage what savings, if any, will be realized from the Commission's proposals, the MDTC cannot offer a recommendation as to the apportionment of such savings. The MDTC urges the Commission to revisit the issue when the likely size of these savings is known, and to seek further guidance from the Joint Board.

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<sup>69</sup> The Fund's size should not increase from its existing levels. In addition, the Commission needs to reevaluate the existing contributions mechanism, as well, since voice-only revenues cannot be expected to provide ongoing support to broadband. The MDTC does not discuss this issue further, because it anticipates that the Commission will be releasing a separate NPRM on contributions shortly. *Supra* at n.26. However, the MDTC notes that it does not support increasing the monetary burden on Massachusetts consumers and businesses, nor does it offer comment on how the CAF should be funded in the long-term.

**5. If the Commission forbears from applying the ETC requirement for USF support, the Commission must ensure that states have the opportunity to have a lead role in provider selection and oversight**

Section 254(e) requires that a carrier must be designated as an ETC to receive universal service support, and section 214(e) describes the parameters by which ETC designations may be made.<sup>70</sup> As a part of its ETC-related inquiries for disbursement of funds through the CAF, the Commission seeks comment on whether it can or should forbear “from imposing [the ETC] requirement on recipients in general . . . [or] on recipients of support in the first phase of the CAF, even if [it does] not forbear in a broader context.”<sup>71</sup> The Commission also inquires as to the conditions that should be attached to such forbearance.<sup>72</sup>

The MDTC refrains from comment as to whether the Commission would be able to satisfy the forbearance standard or whether such an approach is appropriate. Instead, the MDTC focuses on state involvement in the event that the Commission successfully utilizes its forbearance authority. As the Commission recognizes, “USF and ICC are both hybrid state-federal systems, and . . . reform will work best with the Commission and state regulators cooperating to achieve shared goals.”<sup>73</sup>

If the Commission forbears from requiring support recipients from being designated as ETCs, then the Commission should ensure that it provides states with the opportunity to have the lead role in provider designations and oversight for their states. The MDTC reiterates its position that “states are better suited than the Commission to effectively administer funding” and urges the Commission to first consider allocating any funding directly to the states to determine

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<sup>70</sup> See 47 U.S.C. §§ 214(e) and 254(e).

<sup>71</sup> *Comprehensive ICC/USF Reform NPRM* at ¶ 318. See also 47 U.S.C. §§ 160(a) and (b) (setting forth the standard by which the Commission may grant forbearance).

<sup>72</sup> *Comprehensive ICC/USF Reform NPRM* at ¶ 318.

<sup>73</sup> *Id.* at ¶ 13.

and oversee funding recipients.<sup>74</sup> Further, the Commission should permit available funding to augment any state funding that may be provided or matched for service to unserved areas.<sup>75</sup> If the Commission opts not to allocate funding to states directly, then it should provide states with the ability to be directly involved in, or have meaningful influence on, the decision-making process for carriers that seek to receive funding in their states, as well as the ability for states to assert jurisdiction over enforcement and oversight of those carriers.

### **C. Long-Term Intercarrier Compensation Reform**

The Commission looks to long-term reform of ICC, with the ultimate goal of moving away from per-minute charges through two primary approaches.<sup>76</sup> Under the first approach, the Commission would reduce interstate access charges and update the methodology for reciprocal compensation traffic, and would rely on states to implement reforms through their existing roles.<sup>77</sup> The Commission notes access charge reform efforts already undertaken by several states, and requests comment on the status of intrastate access reform in different states.<sup>78</sup> Under the second approach, the Commission would bring all traffic under the purview of section 251(b)(5) reciprocal compensation, with an updated methodology for states to implement, in

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<sup>74</sup> MDTC November 2008 Comments at 23, *citing 2007 Recommended Decision* at ¶ 14. In our 2008 comments, the MDTC urged the Commission to adopt the Joint Board's recommendation to adopt a separate Broadband Fund. Although this recommended Fund was directed towards grant-type awards, we believe that our recommendation is equally applicable to any disbursement methodology ultimately adopted by the Commission for the CAF.

<sup>75</sup> See MDTC November 2008 Comments at 23.

<sup>76</sup> See *Comprehensive ICC/USF Reform NPRM* at ¶¶ 42, 599.

<sup>77</sup> *Id.* at ¶¶ 42, 534.

<sup>78</sup> *Id.* at ¶¶ 544.

order to unify all rates.<sup>79</sup> For this latter approach, the Commission relies heavily on sections 201(b) and 251(g) as support to bring all traffic under the reciprocal compensation umbrella.<sup>80</sup>

The MDTC urges the Commission to adopt the first approach, because the MDTC believes the Commission lacks sufficient legal authority to override state access charge regimes. The MDTC addresses the Commission's legal authority below. In response to the Commission's inquiry regarding state intrastate access charge reform efforts, the MDTC provides as attachments to these comments two orders where the MDTC aligned intrastate and interstate access charges, first in 2002 for the statewide ILEC,<sup>81</sup> which was "part of an ongoing process that began in 1989,"<sup>82</sup> and then in 2009 for competitive carriers. In the first order, the MDTC limited the ILEC's intrastate access charges to no more than its interstate access charges.<sup>83</sup> In the second order, the MDTC capped competitor intrastate access charges at the ILEC's intrastate access charges, permitting an exception if carriers could "demonstrate justifiable costs in excess of the proposed rate cap with cost-specific data."<sup>84</sup> Massachusetts does not have a state USF.

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<sup>79</sup> *Id.* at ¶¶ 42, 534.

<sup>80</sup> *Id.* at ¶¶ 510, 512-15.

<sup>81</sup> Verizon is the ILEC in 347 out of 351 cities and towns in the Commonwealth. *See* Mass. Dep't of Telecomms. & Cable, "Competition Status Report," at 10-11 (rel. Feb. 12, 2010), *available at* [http://www.mass.gov/Eoca/docs/dtc/compreport/CompetitionReport\\_Combined.pdf](http://www.mass.gov/Eoca/docs/dtc/compreport/CompetitionReport_Combined.pdf) (last viewed Apr. 15, 2011).

<sup>82</sup> MDTE Comments, CC Docket No. 01-92, at 9 (filed Oct. 25, 2006). The MDTE is the MDTC's predecessor agency.

<sup>83</sup> *See Investigation by the Dep't of Telecomms. & Energy on Its Own Motion into the Appropriate Regulatory Plan to Succeed Price Cap Regulation for Verizon New England, Inc.*, D.T.E. 01-31 Phase I, Order, at 62-63 (May 8, 2002), *available at* <http://www.mass.gov/Eoca/docs/dtc/dockets/01-31/58order.pdf> (last viewed Apr. 15, 2011), provided as Attachment 1; *Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc.*, D.T.E. Phase II, Order, at 92-93 (Apr. 11, 2003) ("Phase II Order"), provided as Attachment 2. The Phase II Order also permitted Verizon to increase its basic dial tone rate and move most of its other rates to market-based pricing. This proceeding transitioned Verizon from a price cap to an alternate regulation ("Alt Reg") carrier.

<sup>84</sup> *See Petition of Verizon New England, Inc., MCI Metro Access Transmission Services of Massachusetts, Inc., d/b/a Verizon Access Transmission Services, MCI Communications Services, Inc., d/b/a Verizon Business Services, Bell Atlantic Communications, Inc., d/b/a Verizon Long Distance, and Verizon Select Services, Inc. for Investigation under Chapter 159, Section 14, of the Intrastate Access Rates of Competitive Local Exchange Carriers*, D.T.C. 07-9, Final Order, at 27 (Jun. 22, 2009), *available at* <http://www.mass.gov/Eoca/docs/dtc/dockets/07-9/079finalorder.pdf>

**1. The Commission does not have sufficient legal authority to override state access charge regimes**

For the authority to align all rates under section 251(b)(5), the Commission relies heavily on a legal rationale that it previously proposed in 2008.<sup>85</sup> The MDTC reiterates its 2008 response to the Commission on this issue:<sup>86</sup>

The FCC does not have sufficient legal authority under §§ 251(b)(5), 201(b) and 251(g) to preempt states' intrastate access charge regimes . . . [A] "plausible" reading of § 251(b)(5) (coupled with §§ 201(b) and 251(g)) is that it could apply to all *interstate* traffic. The FCC would overstep its Congressionally delegated authority if it attempted to apply § 251(b)(5) to *intrastate* traffic as well.

First and foremost . . . the FCC is expressly barred by § 152(b) "with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with *intrastate communications service* [. . .]," except where Congress has clearly express an exception.<sup>87</sup> Indeed, exceptions to states' § 152(b)

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(last viewed Apr. 15, 2011), provided as Attachment 3. The MDTC currently has an open proceeding to determine whether a competitive carrier's costs exceed Verizon's rates. *See Petition of Choice One Communications of Massachusetts Inc., Conversent Communications of Massachusetts Inc., CTC Communications Corp. and Lightship Telecom LLC for Exemption from Price Cap on Intrastate Switched Access Rates as Established in D.T.C. 07-9, D.T.C. 10-2, Docket (2010).*

<sup>85</sup> *See Comprehensive ICC/USF Reform NPRM* at ¶¶ 512-17. *See also High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link Up*, WC Docket No. 03-109, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Numbering Resource Optimization*, CC Docket No. 99-200, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, *IP-Enabled Services*, WC Docket No. 04-36, *Order on Remand and Report and Order and Further Notice of Proposed Rulemaking*, 24 FCC Rcd 6475, FCC 08-262, Attachment A at ¶¶ 207-35, and Attachment C, at ¶¶ 202-30 (rel. Nov. 5, 2008) ("*2008 Order and ICC/USF FNPRM*") (subsequent history omitted).

<sup>86</sup> *See MDTC November 2008 Comments* at 7-9 (some citations omitted).

<sup>87</sup> *See* 47 U.S.C. § 152(b) (emphasis added). For instance, section 332(c)(3)(A) gives the FCC exclusive jurisdiction over rates and entry of wireless carriers "[n]otwithstanding sections 2(b) and 221(b)." 47 U.S.C. § 332(c)(3)(A). *See also* National Association of Regulatory Utility Commissioners *Ex Parte* to explain (1) neither 47 U.S.C.A. § 251(b)(5) nor § 201(b) provides a basis to preempt Intrastate Access and (2) fixed interconnected VoIP services remain subject to State jurisdiction, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the ESP Exemption*, CC Docket No. 08-152; *IP-Enabled Services*, WC Docket No. 04-36; *Universal Service Contribution Methodology*, WC Docket 06-122; *Petition for Declaratory Ruling Filed by CTIA*, WT Docket 05-194; *Jurisdictional Separations & Referral to the Federal-State Joint Board*, CC Docket 80-286, at 4 (filed Oct. 28, 2008).

authority are limited. Instead, § 152(b), when coupled with § 251(d)(3), specifically preserves state authority over intrastate access charge regimes.<sup>88</sup> Second, as [previously] recognized by the FCC, § 251(g) preserves both sets of access charge regimes, interstate *and* intrastate;<sup>89</sup> under its express terms, however, the FCC may only supercede any pre-1996 “regulation, order, or policy of the Commission.”<sup>90</sup> In other words, the FCC may not supercede any regulation, order, or policy in regards to the access charge regimes of state commissions. Instead, this must be a determination arrived at by the state commissions themselves.

**2. The Commission has sufficient legal authority to revisit the interstate access regime and its reciprocal compensation pricing methodology, but needs to ensure that states have sufficient time to implement reforms**

The MDTC agrees with the Commission that it has sufficient authority to revisit its interstate access requirements, as well as the pricing methodology for reciprocal compensation.<sup>91</sup> However, if the Commission revisits the pricing methodology, the MDTC reiterates its position that it would be improper for the Commission to establish any ratemaking methodology “that presupposes a particular result.”<sup>92</sup> In particular:

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<sup>88</sup> See 47 U.S.C. § 251(d)(3): “**Preservation of State Access Regulation**: In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that (a) establishes access and interconnection obligations of local exchange carriers; (b) is consistent with the requirements of this section ...” (emphasis added).

<sup>89</sup> The Commission acknowledged:

Although section 251(g) ... expressly preserves only the Commission’s traditional policies and authority over interstate access services ... it nevertheless highlights an ambiguity in the scope of “telecommunications” subject to section 251(b)(5) – demonstrating that the term must be construed in light of other provisions in the statute. In this regard, we again conclude that it is reasonable to interpret section 251(b)(5) to exclude traffic subject to parallel intrastate access regulations, because it would be incongruous to conclude that Congress was concerned about the effects of potential disruption to the interstate access charge system, but had no such concerns about the effects on analogous intrastate mechanisms.

*Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Declaratory Ruling and Notice of Proposed Rulemaking, 14 FCC Rcd 3689 (1999), *vacated and remanded*, *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000); Order on Remand and Report and Order, 16 FCC Rcd 9151, 9168 (2001), *remanded*, *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *cert. den.* 538 U.S. 1012 (2003) (citation omitted).

<sup>90</sup> 47 U.S.C. § 251(g) (emphasis added).

<sup>91</sup> See *Comprehensive ICC/USF Reform NPRM* at ¶¶ 54, 501, 510, 516, 538.

<sup>92</sup> See MDTC November 2008 Comments at 16.



The Supreme Court has determined that the FCC’s “issuance of [pricing methodology] rules” for establishment of just and reasonable rates should only “guide the state-commission judgments.”<sup>93</sup> Under a pricing methodology and the “Pricing Standards” set forth in § 252(d), it is the States that “apply those standards and implement that methodology, determining the concrete result in particular circumstances.”<sup>94</sup> The Supreme Court’s determinations denote an expected flexibility for states when applying any pricing methodology. If the FCC, however, “adopts a “methodology” that caps the rate, sets a range of rates, or otherwise predetermines the outcome, this ... would limit the state commissions’ ability to set rates based upon their evaluation of costs and put the states in the position of doing little more than ratifying the Commission’s rate-setting activity.”<sup>95</sup>

To the extent that the Commission updates its interstate access charge scheme and implements a different reciprocal compensation pricing methodology, the MDTC urges the Commission to give states sufficient time to respond and, if necessary, to update their own requirements. This may require at least three to five years for states to complete implementation of consequential state reforms.<sup>96</sup>

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<sup>93</sup> *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 380-81 (1999) (“*Iowa Utils. Bd.*”).

<sup>94</sup> *Iowa Utils. Bd.*, 525 U.S. at 384.

<sup>95</sup> Earthlink, Inc., Granite Telecommunications, LLC, PAETEC, RCN Telecom, and Zayo Group, LLC, Ex Parte, CC Docket Nos. 01-92 and 99-68, at 7 (filed Oct. 20, 2008).

<sup>96</sup> For instance, when the MDTC conducted an investigation reviewing the total-element long-run incremental costs (“TELRIC”) of Verizon’s rates, the proceeding took approximately 4 years to complete. *See, e.g., Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts’ Resale Services in the Commonwealth of Massachusetts*, D.T.E. 01-20 Part A-C, Order on Verizon Massachusetts’ Motion to Reopen the Record, at 4-9 and 37-46 (Dec. 15, 2004) (describing the proceeding’s background and the MDTC’s application of TELRIC), available at <http://www.mass.gov/Eoca/docs/dtc/dockets/01-20/1215acorder.pdf> (last viewed Apr. 15, 2011), provided as Attachment 4.

### **III. CONCLUSION**

The MDTC thanks the Commission for this opportunity to comment.

Respectfully submitted,

/s/

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Geoffrey G. Why, Commissioner